

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

SIX FLAGS GREAT ADVENTURE

Employer¹

and

Case 4–RC–20642

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO, LOCAL
UNION 400

Petitioner²

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

The Employer, Six Flags Great Adventure, operates an amusement park in Jackson, New Jersey. The Petitioner, International Brotherhood of Electrical Workers, AFL-CIO, Local Union 400, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of the Employer's Point of Sale (POS) Technicians, POS Supervisors, and POS Administrators who work in the amusement park.³ The Employer takes the position that the POS Administrator and POS Supervisors are supervisors within the meaning of Section 2(11) of the Act and should be excluded from the unit. The Employer further contends that the POS Technicians should be excluded on the basis that they are irregular or casual seasonal employees. Finally, the Employer contends that as of the hearing it had not hired any POS Technicians for the 2003 season, and if the Administrator and Supervisors are excluded as supervisors the Employer does not employ a substantial and representative complement of employees in the petitioned-for unit, and therefore the petition should be dismissed.⁴ The Petitioner asserts that the Administrator and Supervisors are not statutory supervisors, that all of the employees are regular seasonal employees, and that the

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing.

³ The petition was amended at the hearing.

⁴ The Employer alternatively argues that the petition should be dismissed because it is unsupported by a valid showing of interest. The showing of interest, however, is a nonlitigable administrative matter. *Pike Co.*, 314 NLRB 691 (1994); *O.D. Jennings & Co.*, 68 NLRB 516, 517 (1946). Any motion to dismiss a petition based on an alleged invalid or deficient showing of interest must be made directly to the Regional Director. See Sec. 11021 of the NLRB Casehandling Manual Part Two (Representation Proceedings).

Employer has a substantial and representative complement of employees in the petitioned-for unit. A hearing officer of the Board held a hearing, and the parties filed briefs with me.

I have considered the evidence and the arguments presented by the parties concerning the supervisory status of the POS Administrator and POS Supervisor positions and the eligibility of the POS Technicians. As discussed below, I have concluded that the Administrator and Supervisors are not supervisors within the meaning of Section 2(11) of the Act and that the POS Technicians are regular seasonal employees. In addition, I find that the Employer has a substantial and representative complement of employees in the unit. Accordingly, I have directed an election in a unit of the POS Administrators, POS Supervisors, and POS Technicians employed at the Employer's Jackson, New Jersey amusement park.

To provide a context for my discussion concerning the issues, I will first present a brief overview of the Employer's operations. Then, I will review the factors that must be evaluated in determining supervisory and regular seasonal employee status. Thereafter, I will present in detail the facts and reasoning that support my conclusions.

I. OVERVIEW OF OPERATIONS

While the Employer operates on a year-round basis, the amusement park opens to the public on weekends beginning in late March or early April⁵ and seven days a week beginning around the middle of May, when the park's peak season begins. The peak season hours are approximately 9:30 a.m. to 10:00 p.m. The park is closed to the public after late October.

"Point of Sale" refers to the various places throughout the park, such as food and merchandise stands and ticket locations, where sales transactions occur and are recorded on a cash register. The Point of Sale Department is responsible for the maintenance of those registers.

For six years Bill Raney has been the Manager of both the POS Department and the Management Information Service (MIS) Department. Lee Wade, the MIS Supervisor, assists him in running both departments.⁶ Wade has been the MIS Supervisor for approximately three years. In that capacity, he supervises the POS employees and an MIS clerk.⁷

Michael Phillips, the POS Administrator, and Anthony Ansaro, a POS Supervisor, report directly to Wade. Ansaro is currently the only POS Supervisor, but in prior seasons the Employer has employed two or three POS Supervisors. Ranking below them are the POS Technicians. POS Technician is the entry-level job in the POS Department.

POS Technicians are generally college students who are hired from other departments in the park. Newly hired Technicians are trained informally on the job by the Administrator,

⁵ In 2003 the park opened on April 5.

⁶ The parties stipulated that the MIS/POS Manager and MIS Supervisor positions are supervisory within the meaning of Section 2(11) of the Act.

⁷ No party contends that the MIS Clerk should be included in the unit.

Supervisors, and other Technicians, using a compendium of “standard operating procedures” drafted by the POS Administrator.

Raney and Wade are year-round employees. The POS Administrator and Supervisors, like Technicians, are seasonal employees, but they begin work earlier and finish later in the season than the Technicians. The Technicians generally finish their season in September to return to college, while the Administrator and Supervisors end their season in November, after the park’s public operation closes for the year. Employees in the POS Department work on three shifts.⁸ POS Department employees begin work an hour before the opening and leave an hour after the close of the park.

The POS Administrator and Supervisors receive annual evaluations from Raney and Wade around July and are given wage increases based on these evaluations. Phillips’ wage rate is currently \$14.50 per hour and Ansaro’s is \$9.50; it was increased from \$8.25 when he was promoted from Technician to Supervisor in July 2002.

Entry-level POS Technicians earn about \$7.00 per hour. Technicians do not receive performance evaluations. Technicians who are rehired from an earlier season receive a standard wage increase, usually around \$.25 per hour, based on their years of service. Raney and Wade, as full-time employees, receive fringe benefits, but the POS Administrator, Supervisors, and Technicians, like all of the Employer’s seasonal employees, do not receive benefits

All seasonal employees, including the POS Administrator, Supervisors and Technicians, “swipe in” with their identification cards when they report to work. Raney and Wade do not swipe in. The POS Administrator and Supervisor each have their own e-mail address, as do management employees. By contrast, the Technicians all use a common e-mail address. All employees wear identification badges.⁹

II. THE RELEVANT LEGAL STANDARDS

A. Supervisory Status

A finding of supervisory status is warranted only where the individual in question possesses one or more of the indicia set forth in Section 2(11) of the Act. *The Door*, 297 NLRB 601 (1990). The statutory criteria are read in the disjunctive, and possession of any one of the indicia listed is sufficient to make an individual a supervisor. *Juniper Industries, Inc.*, 311 NLRB 109, 110 (1993). The statutory definition specifically indicates that it applies only to individuals who exercise “independent judgment” in the performance of supervisory functions and who act in the interest of the employer. *NLRB v. Health Care & Retirement Corp.*, 511 U.S. 571 (1994). The Board analyzes each case in order to differentiate between the exercise of independent judgment and the giving of routine instructions, between effective recommendations

⁸ The record does not indicate the times of the shifts or the working hours of the employees.

⁹ The parties dispute whether the badges for Technicians are of a different color than for the Administrator and Supervisor. Raney testified that the Technicians wear a black badge and that the Administrator and Supervisor wear a badge of a different unidentified color, while Ansaro testified that the badges are all blue.

and forceful suggestions, and between the appearance of supervision and supervision in fact. The exercise of some supervisory authority in a merely routine, clerical or perfunctory manner does not confer supervisory status on an employee. *Id.*; *Juniper Industries*, supra, 311 NLRB at 110. Additionally, the sporadic exercise of supervisory authority is not sufficient to transform an employee into a supervisor. *Gaines Electric*, 309 NLRB 1077, 1078 (1992); *Ohio River Co.*, 303 NLRB 696, 714 (1991), *enfd.* 961 F.2d 1578 (6th Cir. 1992). Job descriptions or job titles suggesting the presence of supervisory authority are not given controlling weight. Rather, the Board insists on evidence supporting a finding of actual as opposed to mere paper authority. *East Village Nursing and Rehabilitation Center v. NLRB*, 165 F.3d 960 (D.C. Cir. 1999); *Food Store Employees Local 347 v. NLRB*, 422 F.2d 685 (D.C. Cir. 1969); *North Miami Convalescent Home*, 224 NLRB 1271, 1272 (1976). Evidence of the exercise of secondary indicia of supervisory authority is not sufficient to establish supervisory status in the absence of primary indicia of supervisory authority. *First Western Building Services*, 309 NLRB 591, 603 (1992).

The Board has an obligation not to construe the statutory language too broadly because the individual found to be a supervisor is denied the protection of the Act. *Azusa Ranch Market*, 321 NLRB 811, 812 (1996). The burden of establishing supervisory status is on the party asserting that such status exists. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706 (2001); *Fleming Companies, Inc.*, 330 NLRB 237 fn. 1 (1999); *Bennett Industries*, 313 NLRB 1363 (1994). Where the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established, at least on the basis of those indicia. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

B. Regular Seasonal Employee Status

The Board finds that regular seasonal employees are those employees who have a reasonable expectation of reemployment in the future. *L&B Cooling*, 267 NLRB 1, 2–3 (1983), *enfd.* 757 F.2d 236 (10th Cir. 1985); *Maine Apple Growers*, 254 NLRB 501, 502–503 (1981). In deciding whether seasonal employees are eligible voters, the Board assesses their expectation of future employment. Factors which the Board considers in finding employees to be regular seasonal employees include the size of the area labor force, the stability of the employer's labor requirements and the extent to which it is dependent on seasonal labor, the actual reemployment season-to-season of the work complement, and the employer's recall or preference policy regarding seasonal employees. See *Macy's East*, 327 NLRB 73 (1998); *Maine Apple Growers*, supra, 254 NLRB at 502–503; *L&B Cooling*, supra, 267 NLRB at 2–3; *Kelly Brothers Nurseries*, 140 NLRB 82, 85 (1962).

III. FACTS

A. The Operation of the POS Department

The POS employees service, maintain, and repair approximately 400 cash registers that are connected to the park's computer server.¹⁰ The server, which is centrally located in a control room at the park, controls what happens on eight different "loops" of cash registers. POS Department employees also service credit card machines, check machines, and cash registers that are not connected to the server.

Work orders are usually generated through requests for repair or service from the register users or management employees in other departments. These requests are communicated in writing or via radio, telephone or e-mail. They may also appear as error messages on the servers. Some of the more typical work orders involve communication problems between the register and the server, printer malfunctions, and requests to move registers, make changes to the menu,¹¹ or add the names of new employee users to the server. There are several reports, such as a report on the sales activity on the registers, which are generated every night by the POS employee on duty at the end of the evening. POS Technicians, Supervisors, and the Administrator all provide casual instruction to cashiers as how to use the cash registers.

POS Technicians spend about 90 percent of their time working in the field servicing and repairing the cash registers. For the most part, they work independently of the POS Supervisors, and sometimes they are the only POS department employees on the premises. In fact, inasmuch as the park is open seven days a week and the four or five POS employees are scheduled over three shifts, all POS Department employees spend a substantial amount of their time working alone.

The Supervisors and the Administrator are based in a shop at the park and divide their time between the shop, the server control room, and the field. The Supervisors and Administrator spend about two hours a day generating reports and performing server configurations, and the rest their time in the field performing work similar to the Technicians, either assisting them or working independently.

The parties disagree as to the extent to which the work of POS Technicians, Supervisors and the Administrator overlap, and in particular, whether Technicians are permitted access to the control room to perform higher-level configuration changes. Raney testified that only the POS Administrator and Supervisor have access to the control room and are authorized to make configuration changes to the server, such as changes in menu prices, sale item names, and the production and structure of reports. He asserted that Technicians, due to their lower level of skill and experience, generally do not make such configuration changes. Raney further testified that

¹⁰ About 305 of the registers are standard IBM models and the remaining registers are Dell models. The Dell registers were installed in January or February of 2003. Phillips and Ansaro returned to work prior to the start of the season to assist in building the terminals, loading and configuring the software, setting up the stores and menus, stationing the registers, and testing and troubleshooting any problems.

¹¹ The menu is the list of sale items that appears on the register's keyboard. Each register has its own menu mix.

the POS Administrator and Supervisor have a higher level of security clearance¹² than the Technicians, which enables them to access more information, particularly sales and revenue information, on the server. Ansaro, on the other hand, testified that Technicians may perform these configuration changes if they know how, and that he, both as a Technician and Supervisor, has performed configuration changes and has observed other Technicians performing configuration changes. He also testified that he had the same security clearance (Level 9) as a Technician as when he became a Supervisor and that he received this clearance rating when he first entered the POS Department in 2000.¹³

The POS Administrator and, to a lesser extent, the POS Supervisors, are available to other department heads in the park to answer questions related to the cash registers. The POS Administrator and Supervisor also provide the Loss Prevention Department with reports regarding cash register and sales activity. These reports are generally used in connection with security investigations of suspected misconduct by cashiers. According to Raney, POS Technicians are not involved in providing such reports, but Ansaro testified that he helped to prepare Loss Prevention reports as both a Technician and Supervisor.

B. Authority of the POS Administrator and POS Supervisors

Until the 2002 season, the Employer did not have a POS Administrator. Michael Phillips, a graduate student in Computer Science, has been the POS Administrator for approximately one year. Previously, he was a POS Supervisor for about 10 years. Phillips is generally responsible for overseeing the activities of the POS Supervisors and Technicians. If there are emergencies involving the server, he is generally contacted to address them, and he is the only employee who is authorized to order repairs to the server.

The Employer promoted Ansaro to POS Supervisor in July 2002. He had been a POS Technician since the 2000 season,¹⁴ and before becoming a POS Technician, he had worked in the park's Retail Department for three seasons. Raney testified that Phillips and Conk recommended Ansaro for the POS Supervisor position, and after reviewing Ansaro's work record with them, he gave final approval. Ansaro testified, in contrast, that he asked Wade for a wage increase, and Wade asked him to write out his goals and describe his knowledge of the park for review by Wade and Raney. Raney subsequently informed him that he had been promoted and would receive a raise. Ansaro received no additional technical or supervisory training as to his duties and responsibilities as POS Supervisor beyond the standard operating procedures used by all POS Department employees. Ansaro has never hired, discharged, scheduled, disciplined, promoted, evaluated, granted a wage increase, or assigned overtime to any employee, and he does not believe he has the authority to so.

¹² The access levels are rated 1 through 9. The Administrators and Supervisors are at Level 9. The Administrator and Supervisors have the authority to grant Technicians temporary access to the server up to the point of their own security clearance.

¹³ The record does not reflect the security level of the other Technicians.

¹⁴ The record indicates that Conk recruited Ansaro but does not further reflect the details of the process by which Ansaro became a Technician.

Phillips prepares the weekly work schedule for himself and the other POS Department employees and submits the schedule to Raney. He prepares the schedule after informally meeting with the Supervisors and Technicians to discuss what schedule would accommodate everyone. Raney and Wade generally authorize overtime work by POS Technicians. According to Raney, the Administrator has the authority to grant overtime in their absence, but there is no evidence as to when, how often or under what circumstances this may have happened.

Raney prepares the labor budget for the POS Department and gives a copy of it to Phillips. Phillips tracks hours worked by all POS Department employees and submits a summary of these hours to Raney on a weekly basis. When they are ill or otherwise unable to attend work, the POS Technicians notify the POS Supervisor on duty or the POS Administrator, rather than Raney, whom they would only contact if they were unable to reach the Supervisors or Administrator. According to Raney, Phillips handles Technicians' requests for time off independent of any involvement by Raney or Wade, but the record does not reflect how often or in what circumstances Technicians have made such requests.

The Employer asserts that the Administrator and Supervisors assign work to Technicians. Ansaro testified that he assumes that the Administrator and the Supervisor have the right to assign work to Technicians, but that in his experience, there is no formal chain of command and the Technicians generally do not perform their work pursuant to specific directives from the POS Administrator or Supervisors. As a Supervisor, Ansaro has not assigned work to the Technician who was nominally under him, and he was never instructed that assignment of work was an element of the job. In addition, Ansaro testified that his job duties did not change when he became a Supervisor, particularly when he was on duty by himself, and that everyone essentially does the same job.

According to Ansaro, if a Technician or Supervisor is the only POS Department employee available when a service request arrives, he or she will respond, but if there is more than one POS Department employee available, they jointly decide who will respond.¹⁵ A basic rule among them is that if there are two POS employees available to make a service call, the one who most recently started his or her shift will go.

According to the Employer, the Administrator and Supervisors have the authority to discipline and discharge Technicians. There is no evidence, however, that Phillips or any Supervisor has ever independently disciplined or discharged an employee. Raney testified that he or Wade investigates all disciplinary actions, but he could only recall a single disciplinary action during his six-year tenure.¹⁶ In 2001, then POS Supervisor Conk issued a written warning to Technician Randy Brenniger for poor attendance and, shortly thereafter, another warning for misuse of the Internet. While Conk initiated the discipline, Raney conducted his own investigation with Brenniger and reviewed the factual details with Conk. Conk recommended a

¹⁵ Raney testified that the POS Administrator or Supervisor on duty would prioritize certain work order requests involving more serious problems according to their importance and assign Technicians accordingly. The record, however, does not reflect the nature of these problems or their frequency, and Ansaro testified that he prioritized his own work when he had to respond to more than one call.

¹⁶ According to Raney, the POS Administrator and Supervisor have also made recommendations that cashiers in other departments be disciplined. However, the record contains no details regarding the nature of their involvement.

two-day suspension for the attendance infraction and termination for the Internet misuse, and Raney, after an investigation, made the final decision to terminate Brenniger.¹⁷

According to Raney, Phillips conducts informal interviews with park employees who are interested in transferring into POS Technician positions and makes hiring recommendations to Wade. Such recommendations are based on Phillips' experience in working with the Employer's cashiers. Raney then interviews the employee.

Raney testified that in April 2003 he offered a position to a park employee named Fabian, who had been recommended by Phillips and Ansaro, but Fabian declined the position. Ansaro testified that Fabian was an acquaintance of Wade, and Wade broached the issue of hiring him. Wade asked Ansaro and others what they thought of Fabian, and Ansaro responded that he seemed like a good candidate. The record does not contain any other examples of how applicants were recommended for hire.

C. The Employer's Use of Seasonal Employees in the POS Department

The Employer generally hires two POS Technicians during the season and attempts to rehire Technicians from prior seasons. In 2000, there were three POS Supervisors (Phillips, Conk and Nicole Hyphmore) and two Technicians (Ansaro and Brenniger). Phillips, Conk, and Hyphmore¹⁸ returned for the 2001 season as Supervisors, Ansaro returned as a Technician, and Brad Chiapetta filled the Technician slot vacated by the discharged Brenniger. The Employer started the 2002 season with Phillips and Conk as Supervisors and Ansaro and Luis Lamose as Technicians. In July, Phillips became the Administrator and Ansaro became a Supervisor. At the time of the hearing, the staffing in the POS Department for 2003 included Phillips as Administrator and Ansaro as Supervisor. Conk had started the season as a Supervisor but was called to active military duty and is not expected to return until the 2004 season. The Employer has not yet hired any Technicians for the 2003 season, although it has made at least one offer to a candidate.

IV. ANALYSIS

A. The Supervisory Status of the POS Administrator and POS Supervisors

The Employer contends that the POS Administrator and POS Supervisor have the authority to discipline, suspend, discharge, promote, and assign work to POS Technicians and effectively to recommend their hiring. There is insufficient evidence to support these contentions.

POS Administrator Phillips and POS Supervisor Ansaro, like the POS Technicians, spend the overwhelming majority of their time performing hands-on work related to the service and maintenance of POS registers and equipment, though their work may be more complex at times

¹⁷ The record does not indicate what involvement, if any, Wade, who was Conk's immediate supervisor, had in the matter.

¹⁸ Hyphmore had previously been a Technician for several years.

than the Technicians' normal duties. Indeed, early and late in the season, when Technicians are not working at the park, the POS Administrator and Supervisors perform all of the work ordinarily done by the Technicians. Moreover, Ansaro observed no change in his daily routine when he became a POS Supervisor in the middle of the 2002 season.

The Administrator and Supervisor have no authority to hire, promote, or discharge employees, or effectively to recommend such actions. The record contains only a single incident relating to hiring, and it does not establish that Phillips or Ansaro effectively recommended Fabian's hire, particularly since Raney interviewed Fabian himself before offering him the position. The single incident of discipline and discharge, involving Randy Brenniger, occurred in 2001, and the final decision was made by Raney after he conducted an independent investigation of the circumstances. Moreover, Raney and Wade are generally responsible for investigating all disciplinary action involving POS employees. Ansaro's promotion to Supervisor also does not provide a basis for establishing that the Administrator or Supervisors have Section 2(11) authority. Raney made the decision to promote Ansaro, but it is not clear to what extent he relied on the recommendations of Phillips and Conk, especially since it was Wade who told Ansaro to write about his goals and knowledge of the park.

The record also fails to show that Phillips or Ansaro assign work or responsibly direct employees. POS Technicians generally work alone responding to requests from register users, and Phillips does not regularly assign them specific tasks. Ansaro testified in conclusory terms that he believed he and Phillips have the authority to assign work, but there is no evidence as to what work they assign or whether they use independent judgment in making the assignments. Significantly, when more than one POS employee is working, the employee who arrived last, regardless of position, generally performs the next task. While Phillips is nominally in charge of scheduling, scheduling decisions are generally reached by consensus, given the small size and collegiality of the department. Thus, Phillips' role in scheduling appears to be of a routine clerical nature and does not require the exercise of independent judgment. See e.g., *Loyalhanna Care Center*, 332 NLRB 933, 935 (2000). Raney testified that Phillips has the authority to authorize overtime in the absence of Raney and Wade, but there is no evidence that he has ever done so.

Phillips is paid substantially more than the Technicians are paid, but he has worked in the POS Department for 10 years and has advanced training in Computer Science. Ansaro is paid \$1.25 per hour more as a Supervisor than the rate that he received as a Technician. The higher wage rate, however, is only a secondary indicium of supervisory status and alone is insufficient to establish that Phillips and Ansaro are supervisors, in the absence of statutory indicia. *Billows Electric Supply of Northfield, Inc.*, 311 NLRB 878 (1993). Lastly, if the POS Administrator and Supervisor are statutory supervisors, the supervisor to employee ratio is an implausible one to one or two to one. See *MJ Metal Products, Inc.*, 325 NLRB 240, 241-242 (1997), *enfd.* 267 F.3d 1059 (10th Cir. 2001); *North Miami Convalescent Home*, 224 NLRB 1271, 1274 (1976).

Based on the foregoing, I find that the Employer has not carried its burden of establishing that either the POS Administrator or POS Supervisor is a supervisor within the meaning of Section 2(11) of the Act.

B. Seasonal Employment Status of POS Employees

The Employer has a recurrent need to supplement the POS Department with employees for a limited time each year, basically from May to September, and therefore the Employer is clearly dependent on seasonal labor. In addition, the Employer prefers to hire current park employees for the POS Department and to rehire POS employees from season to season, and most employees in the POS Department have worked for the Employer for several seasons. Indeed, all of the employees who started the 2003 season, Phillips, Conk and Ansaro, had been employed in the department in the 2002 season. The Employer also has a policy of conducting performance evaluations with attendant wage increases for its Administrator and Supervisors and granting wage increases for returning Technicians based on their years of service, both of which are consistent with its policy favoring the reemployment of its seasonal employees. Based on the foregoing, I find that the Employer's POS Administrator, POS Supervisors, and POS Technicians are regular seasonal employees with a reasonable expectation of reemployment in the foreseeable future. *Six Flags Over Georgia, Inc.*, 215 NLRB 809, 810 (1974) (stage technicians); *Kelly Brothers Nurseries*, supra. As I have found that the Administrator and Supervisor are non-supervisory employees, the Employer's contention that the petition should be dismissed because it has not hired a substantial and representative complement of employees is without merit.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All Point of Sale Technicians, Point of Sale Supervisors, and Point of Sale Administrators employed by the Employer at its Jackson, New Jersey amusement park, excluding all other employees, clerical employees, professional employees, the MIS/POS

Manager, the MIS Supervisor, the MIS clerk, guards and supervisors as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by International Brotherhood of Electrical Workers, AFL-CIO, Local Union 400. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within **7** days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the **full** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **June 12, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597-7658. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **June 19, 2003**.

Signed: June 5, 2003

at Philadelphia, PA

/s/

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

Classification Index Numbers

324-2000
362-6724
177-8500

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